IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-435

IMPERIAL IRRIGATION DISTRICT, ET AL., *Petitioners,*

v.

BEN YELLEN, ET AL., *Respondents.*

PETITIONER'S REPLY BRIEF

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Pursuant to Rule 24(4), Petitioner Imperial Irrigation District ("the District") herein submits its reply brief addressed to arguments which are raised for the first time in the "Memorandum in Opposition" filed by Respondents Ben Yellen, et al., in Nos. 79-421, 79-425, and 79-435.

Fundamental to the District's theory of this case is the fact that it arises under the Boulder Canyon Project Act ("Project Act"), which requires the Secretary to deliver water necessary to satisfy present perfected rights.[1] Until now, neither this Court nor any lower federal court has ever ruled on the question of whether

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[1] The present perfected rights involved in this case were quantified by this Court's supplemental decree of January 9, 1979, in *Arizona* v. *California,* 439 U.S. 419. See the District's Petition at 4.

the Project Act requires that delivery of water be limited to 160 acres in single ownership.[2]

Respondents argue that, because the Project Act does not contain an express exemption from the acreage limitation provisions of the Reclamation Law, it must incorporate those provisions. In support of this proposition, they cite (Resp. Br., at 12) the following statement by this Court in *Ivanhoe Irrigation District* v. *McCracken,* 357 U.S. 275 (1958):

> "Significantly, where a particular project has been exempted because of its peculiar circumstances, the Congress has always made such exemption by express enactment." 357 U.S., at 292.

Respondents' argument overlooks the fact that the Project Act does expressly exempt the Boulder Canyon Project from acreage limitation provisions of the Reclamation Law *to the extent that those provisions would prevent the satisfaction of present perfected rights.* Congress could have worded this exemption in a number of different ways. The language it chose was as follows:

> "Sec. 6. The dam and reservoir . . . shall be used . . . for . . . satisfaction of present perfected rights . . . ."
>
> "Section 14. This act shall be deemed a supplement to the reclamation law, which said reclamation law shall govern the construction, operation, and management of the works herein authorized, except as otherwise herein provided." (emphasis added.)

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[2] A state court has held that the Boulder Canyon Project Act does not authorize acreage limitations in Imperial Valley. See the District's Petition at 25-26.

Thus, the plain language of § 14 indicates that the Reclamation Law is incorporated only to the extent that it is not in conflict with other provisions of the Project Act. And § 6 of the Project Act specifically requires that present perfected rights be satisfied. Congress could hardly have been more explicit in creating an exemption from the acreage limitation provisions of the Reclamation Law for lands to which present perfected rights are appurtenant.

To hold that the Project Act does not exempt lands to which present perfected rights are appurtenant would do violence not only to the plain language of the Act, but to well-settled rules of statutory construction. As explained in the District's Petition,[3] if § 14 of the Project Act is construed to make the acreage limitation provisions of the Reclamation Law applicable to the District, § 14 is in conflict with § 6 and renders § 6 nugatory. Such a construction would violate the fundamental rule of statutory interpretation that:

> "An interpretation of the statute which would . . . render different sections inconsistent with each other, cannot be the true one." *Perrine v. Chesapeake & D. Canal Co.*, 50 U.S. [9 How.] 172, 187 (1850).

Conflict between § 6 and § 14 can be avoided, and both sections can be given effect, if the limiting language of § 14—"except as otherwise herein provided"—is construed to mean just what it says. The plain meaning of this language is that under § 14 the Reclamation Law does not apply to the extent that it is in conflict

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[3] See the District's Petition at 14-19.

with § 6 or any other part of the Project Act. That is to say, there is an exemption from the acreage limitation provisions of the Reclamation Law for lands having appurtenant present perfected rights.

A corollary to the rule that a statute should be interpreted so as to render its various provisions consistent with one another is the rule that, where a statute contains specific and general provisions in apparent contradiction, the specific provisions prevail. The Court articulated this rule in *Townsend* v. *Little,* 109 U.S. 504 (1883), as follows:

> "[G]eneral and specific provisions, in apparent contradiction, whether in the same or different statutes . . . may subsist together, the specific qualifying and supplying exceptions to the general . . . ." 109 U.S., at 512.

In *Missouri* v. *Ross,* 299 U.S. 72 (1936), the rule was stated in the following terms:

> "[S]pecial provisions prevail over general ones which, in the absence of the special provisions, would control." 299 U.S., at 76.

The § 6 requirement that present perfected rights be satisfied is a specific provision, while the § 14 incorporation of the Reclamation Law is a general provision. To the extent these two are in conflict (and, as explained above, they need not be in conflict if effect is given the limiting language of § 14), § 6 must prevail. Again, the result is an exemption from acreage limitations where present perfected rights are involved.

* * * * *

As explained in the District's Petition at 24, the Department of the Interior for more than 34 years con-

sistently interpreted the Project Act as not requiring acreage limitations in Imperial Valley. In an apparent effort to refute this administrative construction, Respondents state:

> "[T]he acreage limitation was interpreted [by the Department of the Interior] to apply in the Coachella Valley, but not the Imperial Valley, although water was delivered under the Project Act to both through the All American Canal." Resp. Br., at 8.

This statement is misleading because Coachella Valley County Water District has no present perfected rights which the Secretary must satisfy under § 6 of the Project Act. Delivery of water from the Colorado River to Coachella Valley did not commence until 1952; this Court's decision in *Arizona* v. *California,* 373 U.S. 546 (1963), restricts present perfected rights to quantities of water used prior to June 25, 1929, the effective date of the Project Act. Obviously, in places like Coachella that have no present perfected rights, § 6 of the Project Act (which requires the satisfaction of present perfected rights) is not applicable. Therefore, administrative construction of the Project Act with respect to Coachella Valley is not relevant to determining the proper application of § 6 to Imperial Valley.

* * * * *

In response to the District's contention that the Court of Appeals' decision is in conflict with the decrees of this Court in *Arizona* v. *California,* 376 U.S. 340 (1964), 439 U.S. 419 (1979), Respondents argue only that:

> "[N]either Secretary Wilbur nor Executive Assistant Ely considered 'present perfected rights'

> to be relevant to the issues raised by petitioners." Resp. Br., at 12.

This statement is both specious and irrelevant. It is specious because Secretary Wilbur's determination that neither the Project Act nor the contract required acreage limitations expressly turned on the existence of vested water rights in the Imperial Valley. It is true that the ruling did not refer to these rights as "present perfected rights," but to argue that the ruling therefore did not consider present perfected rights to be relevant is to elevate form over substance. By definition, present perfected rights are vested rights, and there was no question that the "vested rights" referred to in the Wilbur ruling were the same present perfected rights that are involved here.

Moreover, the 1933 Wilbur ruling could in no event be relevant to the question of whether the Court of Appeals' opinion, rendered in 1978, would impair present perfected rights. Such rights were defined in the Court's 1964 decree, and quantified in its 1979 decree. (Inasmuch as the subject of present perfected rights was never briefed or argued in the Court of Appeals, that court may have been unaware that its decision would frustrate this Court's 1979 decree).

* * * * *

Respondents also argue that the Court of Appeals' decision:

> "is completely consistent with . . . this Court's decision in *Ivanhoe Irrig. Dist.* v. *McCracken,* 357 U.S. 275 (1958)." Resp. Br., at 11-12.

This statement is misleading. The *Ivanhoe* case did not involve the Boulder Canyon Project Act. Rather, it involved projects constructed under authority of the various acts authorizing the Central Valley Project in California. These acts did not contain any provisions for the satisfaction of present perfected rights. Nor did any of the landowners or the irrigation districts involved in *Ivanhoe* have present perfected rights or even vested rights.[4] Moreover, the parties to the contracts in *Ivanhoe* agreed, and so represented to the court in the validation proceedings, that the contracts and the applicable statutes required acreage limitations, whereas in the present case, the parties to the contract agreed to the opposite, namely, that neither the relevant statute nor the contract required acreage limitations, and so represented to the court in the validation proceedings. Thus, the *Ivanhoe* decision has no relevance at all to the controversy in Imperial Valley.

* * * * *

Respondents do not answer the District's arguments (i) that it is impossible, factually and legally, to redistribute the water subject to present perfected rights within the District, (ii) that 28 U.S.C. § 1738 requires that full faith and credit be given to the California Superior Court's determination that acreage limitations do not apply to Imperial Valley, and (iii) that

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[4] "It is interesting to note that irrigators in this district receive water diverted from San Joaquin in which they never had nor were able to obtain any water right." 357 U.S., at 285.

Respondents lack standing. Accordingly, this Reply Brief does not address these subjects.

Respectfully submitted,

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